

BEFORE THE JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING A JUDGE NO. 02-466
RE: JUDGE JOHN RENKE III

**THE FLORIDA JUDICIAL QUALIFICATIONS
COMMISSION'S RESPONSE TO JUDGE RENKE'S MOTION
FOR SUMMARY JUDGMENT AMENDED FORMAL CHARGE XI
(NOW SECOND AMENDED FORMAL CHARGE 8) AND MOTION
FOR ADDITIONAL TIME TO RESPOND FURTHER THERETO**

The Florida Judicial Qualifications Commission (the "JQC") hereby responds to Judge Renke's Motion for Summary Judgment Amended Formal Charge IX (now Second Amended Formal Charge No. 8) as follows and moves the Hearing Panel for entry of an order granting the JQC additional time up to and including September 1, 2005 to respond further thereto in the event the Hearing Panel is not convinced on the present limited record that summary judgment must be denied.

I. CONTROLLING SUMMARY JUDGMENT STANDARDS

The existence of any genuine issue of fact on Amended Charge No. 9 (now Second Amended Charge No. 8) precludes summary judgment. Cohen v. Kravitt Estate Buyers, Inc., 843 So. 2d 898, 901 (Fla. 4th DCA 2003) (citations omitted). If there is any doubt about the facts, summary judgment is inappropriate. Dep't of Revenue v. Rudd, 545 So. 2d 367, 372 (1st DCA 1989). "Even where the facts are undisputed, issues of interpretation of such facts may be such as to preclude the award of summary judgment." Franklin County v.

Leisure Properties, Ltd., 430 So. 2d 475 (Fla. 1st DCA 1983). Even if the undisputed facts and the record evidence did not conclusively show the existence of numerous genuine issues of fact for trial on this charge (as they clearly do), Judge Renke's denials and defensive assertions, standing alone, preclude summary judgment. Allington Towers Condo. North, Inc. v. Allington North, Inc., 415 So. 2d 118, 120 (Fla. 4th DCA 1982).

Applying these stringent standards here, it is manifest that the motion for summary judgment on Amended Formal Charge No. 9 (now Second Amended Formal Charge No. 8), must be denied.

II. NUMEROUS GENUINE ISSUES OF FACT PRECLUDING SUMMARY JUDGMENT ON AMENDED FORMAL CHARGE NO. 9 (NOW SECOND AMENDED FORMAL CHARGE NO. 8)

Amended Formal Charge No. 9 (now Second Amended Formal Charge No. 10) allege.

During the campaign in violation of Canon 1, Canon 2A and Canon 7A(3)(a) and §§ 106.08(1)(a), 106.08(5) and 106.19(a) and (b), Florida Statutes, your campaign knowingly and purposefully accepted a series of "loans" totaling \$95,800 purportedly made by you to the campaign which were reported as such, but in fact these monies, in whole or in substantial part, were not your own legitimately earned funds but were in truth contributions to your campaign from John Renke, II (or his law firm) far in excess of the \$500 per person limitation on such contributions imposed by controlling law.

The undisputed facts dispositively demonstrate that summary judgment is inappropriate. It is undisputed that Judge Renke was paid a total of \$166,736.50

by his father's law firm (the "Renke Law Firm") in 2002, which was no less than 56% of the Renke Law Firm's total gross receipts of 296,682.21 in 2002. This is so even though the Renke Law Firm also had (and had to pay) two other attorneys senior to Judge Renke (John K. Renke, II and Thomas Gurran), one or two paralegals and a full time secretary as well an office across the street from the courthouse and general overhead. These undisputed facts alone create a genuine issue of fact regarding whether the senior Renke overpaid his son to fund the election thereby, inter alia, purposefully circumventing the \$500 contribution limit established by Florida law as charged.

It is undisputed that Judge Renke "loaned" 95,800 to his campaign from his 2002 law firm "earnings," which was nearly 90% of the total of approximately \$110,000 spent on the entire campaign.

Judge Renke was an "independent contractor" with the Renke Firm from 1995 through the end of 2002, thus he paid self-employment tax. John K. Renke, II Depo., pp. 34-35. Nevertheless, it is undisputed that Judge Renke's net income from the law firm in 2002 was \$140,116. Id., pp. 35-36. Yet his net income for the years 1995 through 2002, according to Judge Renke's federal income tax returns was as follows.

1995: \$10,941

1996: \$16,020

1997: \$18,608

1998: \$15,328

1999: \$11,480

2000: \$12,682

2001: \$35,975

2002: \$140,116

It is therefore undisputed that Judge Renke's total net income for all seven years prior to 2002 was \$121,034 ($\$10,941 + \$16,020 + \$18,608 + \$15,328 + \$11,480 + \$12,682 + \$35,975 = \$121,034$) versus \$140,166 in 2002 alone. It is also undisputed that Judge Renke's net income for 1995 through 2001 averaged \$17,290 a year ($\$121,034 \div 7 = \$17,290$) versus \$140,116 in 2002. Thus, his net income in 2002 was eight times his average net income from the Renke Law Firm in the previous seven years.

A. The Triglia/Cusumano Litigation

Judge Renke contends that this extraordinary increase in his income, which came just in time to fund his 2002 campaign, represented his share of contingency fees earned by the Renke Law Firm in 2002. The undisputed facts, the testimony of the senior Renke and R. Pierce Kelley, defense counsel in the Triglia/Cusumano litigation,¹ shows that the Triglia/Cusumano fee was not earned until August of 2003 when the Court approved the settlement.

¹ Triglia and Cusumano were two related cases challenging the Timber Oaks Homeowner's Association in Pasco County brought by individual owners, which were settled together.

Judge Renke asserts that “the final income payments Judge Renke received were close in time to the finalization of the Driftwood cases in the summer of 2002,” and the “[Renke] firm had already received a partial payment of \$123,553.05 in March 2001.” This is incorrect based on the undisputed facts and the senior Renke’s testimony, R. Pierce Kelly’s testimony as well as the express terms of the settlement agreement in those cases. In fact, the \$123,553.05 was not a “partial payment” but a deposit on fees which the settlement agreement required the senior Renke to hold in trust until there was final approval. John K. Renke, II Depo., pp. 118-119. The settlement agreement specifically provided that if final approval was not obtained then the \$123,553 had to be paid back by John K. Renke, II and the litigation would proceed. John K. Renke, II, Depo., p. 129.

Thus, John K. Renke, II testified that he paid his son \$101,000 in 2002 out of his own funds because the \$123,553.05 had to be held in trust until the settlement was approved. John K. Renke, II Depo., pp. 130-131. It is undisputed that the settlement was not approved by the Court until August 12, 2003. Kelly Depo. It is undisputed that the senior Renke paid his son out of his own funds \$6,000 on May 11, 2002, \$6,000 on May 15, 2002, \$40,000 on June 17, 2002, \$14,800 on September 5, 2002 and \$35,000 on September 15, 2002 for a total of \$101,800, all supposedly as his share of the fees earned by the Renke Law Firm in Triglia/Cusumano. Id. Since no such fee was earned by the

Renke Law Firm until August of 2003, these payments were at best advances against a contingent recovery which was not obtained until August 12, 2003.

Moreover, the total fee in the Triglia/Cusumano litigation was \$220,736.59. A total of \$101,800 or 46% of the total was paid to Judge Renke in 2002, even though the senior Renke and Thomas Gurran did as much or more work on the same case than Judge Renke. R. Pierce Kelley testified that the senior Renke was the “primary” attorney he dealt, and Judge Renke did not appear at depositions, write briefs, negotiate with him or speak in Court. Further, Thomas Gurran received \$30,000 as his share, but he was not paid until October 2003 – weeks after the fee was actually earned and received. Gurran Depo., p. 52. Unlike Judge Renke, Thomas Gurran did not receive his share of the contingency fee a year early, but then he was not John K. Renke, II’s only son who was running for circuit court judge.

Thus, there are genuine issues of fact precluding summary judgment regarding whether Judge Renke was overpaid and improperly paid in advance so his father could pay for the 2002 campaign based on the Triglia/Cusumano or “Driftwood” litigation alone.

B. Voorhees v. Pearson²

It is undisputed that Judge Renke was paid \$24,000 in 2002 as his share of a contingency fee in Voorhees v. Pearson, while Thomas Gurran was paid \$2,000. Gurran Depo., pp. 19-20. Yet at his deposition Judge Renke had no

² This was a personal injury case where the Renke’s represented the Plaintiff, Stephanie Voorhees.

recollection of preparing any pleadings or discovery in that case and did not know: when it settled; how much it settled for; who the judge was; who opposing counsel was; or whether he ever participated in hearings or other proceedings. Judge Renke Depo., pp. 120-123. By contrast, Thomas Gurran testified that he drafted the complaint, did the initial discovery and substantial legal research. Gurran Depo., p. 91. Nevertheless, it is undisputed that Judge Renke was paid \$24,000 and Gurran \$2,000.

Defense counsel in Voohrees v. Pearson (James B. Thompson), testified that he dealt exclusively with the senior Renke and “didn’t even know” that Judge Renke “existed” because from his “perspective in defending the case he [Judge Renke] had no role at all.” Thompson Depo., pp. 4-5. Judge Renke did not appear in Court for his client even though there were “a lot of hearings” and “absolutely” did not participate in Court. Id., p. 8.

Thompson further testified that he never negotiated with Judge Renke, there were no letters or pleadings sent to him by Judge Renke and he dealt exclusively with the senior Renke. Id., pp. 8-9. Thus, based on his personal knowledge, Thompson testified that he saw no “evidence that would support the proposition that Judge Renke legitimately earned a \$24,000 fee in Voohrees v. Pearson,” and indeed “the only person” Thompson knew “of that had any entitlement to a fee would have been his [Judge Renke’s] father.” Id., pp. 9-10.

III. THE JQC SHOULD BE GRANTED ADDITIONAL TIME TO FURTHER RESPOND IF THE HEARING PANEL IS NOT CONVINCED THAT SUMMARY JUDGMENT IS INAPPROPRIATE

On August 16, 2005, Judge Renke served his motion for summary judgment on this charge. The final hearing is set for September 6 through 8, 2005. Although the JQC has responded simultaneously herewith to Judge Renke's Motion(s) for Summary Judgment on first seven charges on the merits, The JQC cannot fully respond to the motion on this charge without the transcripts from the depositions of John K. Renke, II on August 2, 2005, and R. Piece Kelley who was deposed on August 17, 2005, which have not yet been received from the court reporters.

The foregoing deposition transcripts are crucial for the JQC's response because they relate directly to this charge, John K. Renke, II did not produce the most important financial records until after being ordered by the Hearing Panel to do so and his deposition was not completed until August 2, 2005. The transcript is lengthy and will not be available until late next week. R. Pierce Kelly's testimony will be dispositive regarding, inter alia, the "timing issue" addressed at length in Judge Renke's motion.

Thus, the JQC needs additional time up to and including September 1, 2005, to obtain and digest the foregoing transcripts, and prepare an appropriate response to Judge Renke's motion for summary judgment on Amended Formal Charge No. 9 (now Second Amended Formal Charge 8). The additional time

sought herein will not delay final hearing or prejudice Judge Renke in any way. Accordingly, there is good cause to grant the JQC additional time up to and including September 1, 2005 to respond, if the Hearing Panel is not convinced that summary judgment is inappropriate on the present record.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the foregoing has been furnished by Facsimile and U.S. Mail to **Scott K. Tozian, Esquire**, Smith & Tozian, P.A., 109 North Brush Street, Suite 200, Tampa, Florida 33602-4163 this 23rd day of August, 2005.

Attorney